

LAWRENCE M. WOLTJE
Claimant

CITY OF DODGE CITY
Respondent

KANSAS MUNICIPAL INSURANCE TRUST
Insurance Carrier

In contrast, respondent argues that the Appeals Board (Board) should affirm the ALJ's Order Denying Compensation. The respondent asserts that claimant failed to prove his low back injury occurred at work and further failed to prove that he gave respondent notice of the accident within ten days or failed to establish just cause for not giving notice within ten days.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Board makes the following findings and conclusions:

On December 10, 2000, claimant alleges he injured his low back fighting a residential fire while employed by the respondent. On that date, claimant had been employed by the Dodge City Fire Department since June 19, 1992. Claimant worked for the respondent's fire department as an engineer responsible for driving the fire truck and supplying the firefighters with various tools and equipment to fight the fire.

Claimant and Thomas South, a captain for respondent's fire department, testified before the ALJ at the preliminary hearing. Fellow firefighter, Larry Adams, testified by deposition. These three firefighters were present and actively participated in fighting the residential fire on December 10, 2000. The weather conditions on that night were cold and windy with a temperature of eight degrees. Firefighter Adams had climbed a ladder to the roof of the residence in an effort to cut a hole in the roof to ventilate the fire. As Adams was attempting to climb from the ladder onto the icy roof, he slipped and started to fall down the ladder. At the same time, claimant was climbing up the ladder with another ladder that firefighter Adams needed to hook over the peak of the roof that would allow firefighter Adams to climb on the slippery roof to cut the hole. As Adams slipped off the roof, claimant was able to break Adams' fall and push Adams up the ladder back onto the roof. Adams with his firefighting gear weighed approximately 300 pounds.

After the fire was extinguished, claimant was completely exhausted as a result of working in the cold weather, the difficulty of fighting the intense fire and the exhausting incident of breaking Adams' fall and pushing Adams back up onto the roof. Claimant experienced soreness throughout his body including his low back. Claimant did not, at that time, think he had suffered a permanent injury to his low back.

Between the date of the fire and December 31, 2000, despite his continuing soreness, claimant was able to complete three shifts of work. Because of the Christmas holidays, he took vacation for two of the shifts he was otherwise scheduled to work. Claimant was scheduled to work on December 31, 2000, New Year's Eve but took a day of vacation instead of working. When claimant woke up on New Year's Day, his low back felt "uncomfortable" and "it was really tied up." Claimant worked January 3, 2001, typing reports, but had to get up every couple of hours because of the increased pain in his low back.

On January 4 and 5, 2001, claimant on his own sought chiropractic treatment for his back pain with Dr. Henrichs. Dr. Henrichs had recently treated claimant for low back pain from November 21, 2000, through December 5, 2000. Claimant had "tweaked" his back while moving to another residence. Also, claimant had a history of chiropractic treatments

for low back pain off and on for the last six years. Claimant, however, testified that before the December 10, 2000, fire, his low back had improved and was not symptomatic. Claimant even contemplated before the December 10, 2000, fire, to again start power lifting, an activity he was unable to do for the past two years. Claimant's low back condition did not improve after the January 4 and January 5, chiropractic treatments.

Claimant's low back condition then worsened to the point he sought medical treatment at the emergency room on January 6, 2001. At that time, claimant was given an injection of Demerol, ordered to rest, prescribed pain and anti-inflammatory medication and to follow up with his family physician.

On January 8, 2001, a nurse practitioner, employed by the physician group that previously provided claimant with his general medical treatment, saw claimant. She took claimant off work and placed claimant in a physical therapy program. Finally, claimant was referred for an MRI examination that showed a large central disc herniation at L5-S1. Claimant was then referred to an Nazih Moufarrij, M.D., a surgeon located in Wichita, Kansas.

Dr. Moufarrij saw claimant on February 1, 2001, and recommended claimant undergo a laminectomy and an discectomy at L5-S1 vertebral level. Surgery was performed on February 12, 2001. The surgery was successful and Dr. Moufarrij released claimant to return to his regular job on April 20, 2001.

Respondent argues that claimant failed to prove that the herniated disc found at L5-S1 in claimant's low back was causally related to any incident that occurred while claimant was employed by the respondent. Respondent argues that it is significant that claimant never sought medical treatment for his alleged low back problems until something occurred on New Year's Eve or over the New Year's Eve holiday. Moreover, claimant's medical treatment records do not mention a work related accident until he sees Dr. Merrill Conant on January 17, 2001. Also some of the medical treatment records indicate that claimant gave a history of no injury.

The Board disagrees with respondent and the ALJ and concludes that claimant's testimony coupled with the March 28, 2001, report from R. C. Trotter, M.D., one of claimant's treating physicians, prove that claimant's herniated disc and need for surgery was the result of claimant pushing his fellow firefighter back onto the roof. The Board finds it was reasonable for claimant to not realize the seriousness of the soreness that continued in his low back until the soreness progressed into debilitating pain after New Year's Day. The strenuous and heavy nature of the activities that a fireman has to go through while fighting a fire is likely to leave the fireman stiff and sore. But the stiffness and soreness usually dissipates after a few days. But in this case claimant's soreness in his back progressed into debilitating pain after New Year's Day. Moreover, claimant suffered no other accidents between the December 10, 2000, fire and the increased pain he

experienced on News Year's Day. Although claimant had low back symptoms from moving and was treated for those symptoms until December 5, 2000, those low back problems had resolved by the time of the December 10, 2000, fire.

Admitted into the preliminary hearing record, is a letter dated March 28, 2001, from one of claimant's treating physicians, R. C. Trotter, M.D. In that letter, Dr. Trotter sets out the detailed history claimant gave that describes the incident of claimant pushing a fellow firefighter as the firefighter was slipping off the roof. Dr., Trotter then opines "It seems reasonable to me that the problems for which he had to have surgery was directly related to the incident of December 10, 2000."

Thomas South, a captain for respondent's fire department, testified he heard claimant complain of soreness and exhaustion after the fire was extinguished on December 10, 2000. He testified he heard claimant say "I think I hurt my back" after the firefighters returned to the station on December 10, 2000. But Captain South could not verify that claimant was specifically stating that he hurt his back while fighting the fire. Also, claimant could not recall that he had stated at the fire station that he hurt his back while fighting the fire. In fact, claimant testified he did not realize at the time that he had injured his back while fighting the fire. But his back remained sore and the soreness progressed to the point on News Year's Day that it was uncomfortable and then further progressed to the point of severe disabling pain.

The Board finds that claimant failed to prove he provided respondent with notice of the December 10, 2000, accident within ten days. But the Board also finds that claimant proved he had just cause for not giving respondent notice of accident within ten days.¹

Claimant's uncontradicted testimony established that he told Dan Stucker, chief officer of respondent's fire department, on January 8, 2001, that he had hurt his back while fighting the December 10, 2000, fire. The Board finds the strenuous job duties required of a firefighter often causes the firefighter to be stiff and sore following fighting a fire. That soreness will normally dissipate and go away in a few days. But in this case claimant's soreness progressed and worsened. The Board concludes claimant had just cause for not realizing that the strenuous and heavy effort he was required to make while fighting the December 10, 2000, fire had injured his low back until the soreness resulted in debilitating pain after New Year's Day.²

WHEREFORE, it is the finding, decision and order of the Board that ALJ Pamela J. Fuller's May 16, 2001, Order Denying Compensation should be reversed and remanded to the ALJ for findings on the issues of claimant's request for payment of past medical

¹See K.S.A. 44-520

²See Weiland v. Colonial Manor, WCAB Docket 225,092 (Jan. 1998).

expenses as authorized, future medical treatment, medical mileage and temporary total disability compensation.

IT SO ORDERED.

Dated this ____ day of September, 2001.

BOARD MEMBER

c: Henry A. Goertz, Attorney for Claimant
Jeffrey Brewer, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Phil S. Harness, Workers Compensation Director